

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

UNITED STATES OF AMERICA

VS.

DANIEL GARCIA

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Criminal No. 7:19-cr-00522

DEFENDANT'S MOTION FOR DISCOVERY OF
CO-CONSPIRATOR STATEMENTS AND *JAMES* HEARING

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, DANIEL GARCIA, Defendant, by and through her undersigned counsel Clay S. Conrad, and respectfully moves this honorable Court to order the government to disclose and identify to the defense at least 30 days before trial all alleged co-conspirator statements and that the government and its witnesses be ordered not to refer to or seek to introduce such evidence until a hearing and a ruling has been obtained outside the presence of the jury, and for a pretrial *James* hearing to determine the admissibility of such statements.

At said hearing, Mr. Garcia specifically requests that the Court determine whether the government has shown by a preponderance of the evidence, independent of the statement itself, that: (1) a conspiracy existed; (2) the co-conspirator and Mr. Garcia were members of said conspiracy; and (3) the statement was made during the course and in furtherance of the conspiracy. See *United States vs. James*, 590 F.2d 575, 578-81 (5th Cir.) (en banc), cert. denied, 552 U.S. 917, 99 S.Ct. 2386, 61 L.Ed. 2d 283 (1979); *United States v. Maltesta*, 590 F.2d 1379, 1381 (5th Cir.) (en banc), cert. denied sub nom.; Fed. R. Evid. 801. Mr. Garcia respectfully request a pretrial ruling, particularly as the inadmissibility of such statements is one of the grounds for her motion to sever and for similar motions filed by His codefendants.

Respectfully submitted,

/s/ Clay S. Conrad

Clay S. Conrad

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COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion, has been electronically delivered to the United States Attorneys responsible for litigation in this matter on March 17, 2020.

/s/ Clay S. Conrad

Clay S. Conrad

CERTIFICATE OF CONFERENCE

This is to certify that on March 17, 2020 I conferred with Roberto Lopez, the Assistant United States Attorney in charge of the above-styled and numbered cause, and that he was opposed to the granting of this motion.

/s/ Clay S. Conrad

Clay S. Conrad

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ORDER ON DEFENDANT'S MOTION
FOR DISCOVERY OF
CO-CONSPIRATOR STATEMENTS AND *JAMES* HEARING

On this day came on to be considered Defendant DANIEL GARCIA'S Motion for Discovery of Co-conspirator Statements and James Hearing. Having considered said Motion and the arguments of counsel, the Court hereby GRANTS said Motion and orders the government to disclose to the defense at least 30 days before trial all alleged co-conspirator statements and for the government and its witnesses not to seek to introduce any such evidence or make reference to it without first obtaining a ruling outside the presence of the jury, and sets said Motion for a *James* hearing on _____, 2020, at ____:____.m.

SIGNED on this the ____ day of _____, 2020.

JUDGE PRESIDING